

FREEDOM COURT REPORTING

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 PATTY BEALL, MATTHEW)
5 MAXWELL, DAVID GRAVLEY,)
6 TALINA MCELHANY, KELLY)
7 HAMPTON, KEVIN TULLOS,)
8 CASEY BROWN, JASON BONNER,)
9 ANTHONY DODD, ILENE)
10 MEYERS, TOM O'HAVER, JOY)
11 BIBLES, DON LOCCHI AND)
12 MELISSA PASTOR,)
13 Individually and on behalf) CIVIL ACTION
14 of all others similarly)
15 situated,) NO.: 2:08-CV-422 TJW
16 PLAINTIFFS,)
17 VS.)
18 TYLER TECHNOLOGIES, INC.)
19 AND EDP ENTERPRISES, INC.,)
20 DEFENDANTS.)
21

16 ORAL DEPOSITION OF
17 MELANIE BAIRD
18 APRIL 26, 2010
19

21 ORAL DEPOSITION OF MELANIE BAIRD, produced as a
22 witness at the instance of the DEFENDANTS, and duly
23 sworn, was taken in the above-styled and numbered cause
24 on the 26th day of April, 2010, from 1:22 p.m. to
25 4:30 p.m., before Elaine Fowler, CSR in and for the
 State of Texas, reported by machine shorthand, at the
 offices of Cathy Sosebee & Associates, 901 Mac Davis
 Lane, Lubbock, Texas, pursuant to the Federal Rules of
 Civil Procedure and the provisions stated on the record

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A P P E A R A N C E S

2

FOR THE PLAINTIFFS PATTY BEALL, MATTHEW MAXWELL, DAVID
GRAVLEY, TALINA MCELHANY, KELLY HAMPTON, KEVIN TULLOS,
CASEY BROWN, JASON BONNER, ANTHONY DODD, ILENE MEYERS,
TOM O'HAVER, JOY BIBLES, DON LOCCHI AND MELISSA PASTOR,
Individually and on behalf of all others similarly
situated:

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1 support? What is the business of Tyler?

2 A. They design software for governments so they
3 can operate.

4 Q. But the time you were employed as software
5 support, the software that Tyler sold to the municipal
6 government, those clients would then call you if they
7 had questions about the software?

8 A. Questions or problems.

9 Q. And did I understand you that those problems or
10 concerns would be communicated to you by the customer or
11 the client making a telephone call to you?

12 A. They would call into a phone queue.

13 Q. And when you say phone queue, tell the jury
14 what you mean by that.

15 A. Where they call in and their call is taken in
16 the order it was received.

17 Q. So you never knew what call you were going to
18 receive when you answered a telephone call?

19 A. That is correct.

20 Q. How long did you remain in the software support
21 specialist position?

22 A. Approximately four years.

23 Q. When you first became employed by Tyler your
24 starting salary was around \$28,000; is that right?

25 A. Yes.

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1 Q. But by the time you resigned in 2008 you had
2 received several raises; is that right?

3 A. Yes.

4 Q. And your ending salary was about \$34,984 per
5 year?

6 A. Something like that.

7 Q. As an implementation specialist, what was your
8 job duty and responsibility?

9 A. As an implementation specialist I worked with
10 the project managers to implement contracts.

11 Q. Tell me what that means, implementing
12 contracts.

13 A. Okay. Marketing would sell the applications to
14 the customer and then implementation, we -- project
15 managers would, you know, work out the details with the
16 customers and then we would configure the software into
17 a conversion and then train them on the application.

18 Q. So as an implementation specialist, one of your
19 jobs was to convert and configure; is that right?

20 A. I didn't work on the conversions as much as the
21 trainers did.

22 Q. Did you ever work on conversions?

23 A. I would help them -- in a conversion, I would
24 help them figure out what information needed to go in
25 which field in the software. So, yes, I did work on

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1 conversions.

2 Q. Good. You were starting to explain to me what
3 conversions meant. That was my next question.

4 A. Yes. A conversion is where you take them from
5 a software package they were using with another company
6 and bring that information into our software.

7 Q. Give me an example, because I am trying to
8 envision and understand what it is that you were doing.
9 And I do not have a technical background.

10 A. Okay. Let's say that -- I am trying to think
11 of what you might use.

12 Q. Give me an example of one of the projects you
13 worked on.

14 A. Okay. Say you were using -- say you were using
15 Lotus Notes for your email and you went to Outlook.

16 Q. Okay.

17 A. So it would be bringing those emails into the
18 new program.

19 Q. And with you being involved in the conversion
20 process, what specifically would be involved in taking
21 my email in Lotus Notes over to Outlook?

22 A. That was where the programmers would come in.
23 They would have to write programs to bring that
24 information over. We just had to tell them where to put
25 it.

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1 Q. So your role in the conversion process was
2 where to put what?

3 A. Like we would have to, say, find the customer's
4 name in this software and put it in this field in our
5 software.

6 Q. And who would you give those directions to?

7 A. The project managers, and then they would
8 communicate that with development.

9 Q. So if the subject of the mail was depositions,
10 you would tell the project manager in Lotus Notes the
11 subject field says depositions, in Outlook there is also
12 a field called subject matter, so make sure that the
13 name deposition is incorporated into this field. Am I
14 understanding that correctly?

15 A. Yes.

16 Q. So you were involved in the conversion process
17 in that way. And I think you also said configuration?

18 A. Yes.

19 Q. Help me understand what configuration means.

20 A. Say in like a utility billing software, when --
21 before the customer can bill you how much water or gas
22 or electric you use they have to send a meter reader out
23 to read your meter to get readings.

24 Q. You mean the utility services to the customer?

25 A. Yes.

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1 Q. Okay.

2 A. And so the meter reader will have to go out and
3 get a reading. And then they have a device that they
4 type the reading in. And then we would have to
5 configure based off of the software they used for that
6 how to get that information into the INCODE software.
7 So we have to say the meter number is here, the reading
8 is here, the address is here.

9 Q. And when you say "here", you don't mean a hard
10 copy document, you mean --

11 A. Right.

12 Q. -- a different software application?

13 A. Yes.

14 Q. Okay. Go on.

15 A. We would tell it, you know, the address is in
16 field one, you know, for 10 characters, the name is in
17 field 11 for five characters. We would have to, you
18 know, configure our software to know how to recognize
19 that information.

20 Q. And what steps did you take to configure? I am
21 trying to understand that.

22 A. It would depend on which company they used for
23 their meter reading, because they were all different.

24 Q. Give me an example of one that you can think
25 of.

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1 Q. They continued to use the old software and the
2 new one that they purchased from Tyler?

3 A. No. The old software would be -- we would
4 replace that software. This is other software they used
5 in addition to.

6 Q. So, for example, if your client was switching
7 from -- the example you gave earlier, switching from
8 Lotus Notes to Outlook, it didn't mean that they were
9 also switching from Microsoft Word to Word Perfect, you
10 had to make sure that Microsoft Word was communicating
11 with the new software, Outlook?

12 A. Yes.

13 Q. Am I following you?

14 A. Yes.

15 Q. So you trained them over the phone on
16 interface (sic)?

17 A. Yes.

18 Q. How was your training in person that you did on
19 clients' sites different from doing the training by
20 phone?

21 A. You were hands-on with the customer. When you
22 are on-site you could actually say, okay, you need to do
23 this, this and this. When you are on the phone it is
24 very hard to, you know, actually show them what they
25 need to do.

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1 Q. So when you are on-site training a client you
2 are actually sitting beside or near the user on their
3 computer screen showing them?

4 A. Yes.

5 Q. And when you are doing it by phone, are you
6 logged onto the client's computer to show them this? I
7 am trying to envision how you actually trained when you
8 are remote.

9 A. When we had the opportunity to do it, we would
10 connect to their computers. Sometimes they would have
11 IT stuff that would not let us do that.

12 Q. So when you were not able to remote in, how did
13 you train them by phone?

14 A. I would actually have their screen pulled up on
15 my screen and just say, you know, in the upper
16 right-hand corner you see this, you know, if you look
17 below that you see this and if you look to the left you
18 see that, just guide them the best you could.

19 Q. What training did Tyler Technologies provide
20 for you in the beginning when you first became an
21 implementation specialist?

22 A. None.

23 Q. How did you know how to do your job as an
24 implementation specialist when you first became one?

25 A. I learned as I went. They would give me a task

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1 and I would just have to learn how to do it.

2 Q. So day one when you first became an
3 implementation specialist, did somebody send you to a
4 client site and say, Ms. Baird, go and train them on --
5 name a software, I don't know, INCODE -- is that how it
6 happened?

7 A. No.

8 Q. Okay. So what was done by Tyler to prepare you
9 for your first trip out to a client's site to be able to
10 train them?

11 A. I waited -- I didn't have any formal training.

12 Q. And I am not limiting my question to any formal
13 training. Me, Farin Khosravi, sitting here today, I am
14 trying to understand how you did your job as an
15 implementation specialist with not having any
16 background. So when you went in as an implementation
17 specialist, did you already have an understanding of how
18 INCODE functioned?

19 A. Functioned in which way?

20 Q. Functioned in any way. Were you familiar with
21 INCODE from previous jobs, from previous training, from
22 previous positions you had with the company?

23 A. I mean, I knew how the software worked from
24 working in support.

25 Q. Let's go back to that then. Before you became

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1 A. Exceptional knowledge of all aspects of the
2 job.

3 Q. And then the next sentence is?

4 A. Considered an expert in the field.

5 Q. Why did you consider yourself to be an expert
6 in the field?

7 A. I was trying to get a good raise.

8 Q. Any other reasons? Were you being truthful
9 when you marked that?

10 A. Yes.

11 Q. Any other reasons besides trying to get a raise
12 that you believed you were an expert in your field?

13 A. Well, I just always did a good job.

14 Q. And what did you consider doing a good job?

15 You have said that several times, you did a good job.

16 But what is it specifically that you did that you
17 considered yourself doing a good job?

18 A. Well, I just always took care of the customer
19 to the best of my abilities.

20 Q. Lets turn the page together to the second page
21 of the performance review. Now, look with me under Item
22 Number 3, which is problem solving, and under employee
23 comments. Read me what you put down for problem solving
24 under employee comment.

25 A. This one is difficult because this is done on a

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1 customer by customer basis and is usually handled
2 between the trainer and I. It usually pertains to the
3 way routes are set up for customers and what the best
4 way to set them up for them is.

5 Q. When you say it is usually handled between the
6 trainer and I, help me understand. I thought you were
7 the trainer who trained the customers. What did you
8 mean by that sentence?

9 A. Well, I trained them on the interfaces. We had
10 trainers that went on-site to train them on the modules.

11 Q. So you didn't train them on how to use Tyler's
12 software, you only trained them on how to make two
13 softwares communicate, correct?

14 MS. HOLMES RAY: Object to the form.

15 A. Correct.

16 Q. (BY MS. KHOSRAVI) And what do you mean by the
17 second sentence, it usually pertains to the way routes
18 are set up for customers?

19 A. Well, every customer was different.

20 Q. The routes are set up, what does that phrase
21 mean?

22 A. Routes are like the order the meter readers
23 would read the meters. Like every city is set up
24 differently and they have different ways of doing
25 things.

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1 Q. So you had to actually communicate with the
2 client and find out how they set those up, correct?

3 A. Yes.

4 MS. HOLMES RAY: Objection, form.

5 Q. (BY MS. KHOSRAVI) And you would have to
6 understand that from the client to then know how to
7 assist them with their problems; is that right?

8 MS. HOLMES RAY: Object to the form.

9 Q. (BY MS. KHOSRAVI) You may answer the question.

10 A. Can you repeat that, please.

11 MS. KHOSRAVI: Would you read that back,
12 please.

13 (The reporter read the last question.)

14 A. Correct. Can I ask what time it is?

15 MS. HOLMES RAY: 10 minutes after 2.

16 THE WITNESS: I have to notify my daughter
17 if she has to ride the bus home or not. She gets out at
18 3:15.

19 MS. HOLMES RAY: Off the record.

20 (Break taken from 2:11 p.m. to 2:14 p.m.)

21 Q. (BY MS. KHOSRAVI) Ms. Baird, before we took a
22 quick break we were discussing your employee comments on
23 your performance review with respect to problem solving.
24 Do you remember that?

25 A. Yes.

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1 Q. And we were discussing your comment where it
2 says it usually pertains to the way routes are set up
3 for customers and what the best way to set them up for
4 them is. Do you remember having put that down on your
5 performance evaluation?

6 A. Yes.

7 Q. And was it you then that decided what the best
8 way was to set up the routes for your customers?

9 A. I would make suggestions to the customers, but
10 it was ultimately their decision how it was set up.

11 Q. And how do you decide what suggestions to make
12 to your customers?

13 A. Just -- after doing it for so long you just
14 learn it, you --

15 Q. So you determine what the best route would be
16 provided under the comment?

17

18 MS. HOLMES RAY: Objection, form. You can
19 answer.

20 A. Okay. I would just -- pretty much what I would
21 do, I would say -- you know, I never knew how their old
22 software worked, so I would say this is how our software
23 works and this would be the easiest way for you to do
24 it. But ultimately it was up to them how we set it up,
25 the way they did their day-to-day work.

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1 Q. Now, I want you to go up two lines, again I am
2 on problem solving, and tell me how you rated yourself.
3 Do you see your own ranking under box that has got a
4 capital E on top?

5 A. Yes. There is two of them marked there. I do
6 not know why there is two of them marked there, so I
7 don't know which one I actually picked.

8 Q. Why don't you read me the first one that has an
9 employee checkmark next to it.

10 A. Consistently analyzes problems, recognizes and
11 implements appropriate solutions, finds new and better
12 ways to do things.

13 Q. Tell me what you meant by saying that you
14 recommended and implemented appropriate solutions. Do
15 you remember an example?

16 MS. HOLMES RAY: I am going to object to
17 the form. You can answer.

18 A. Like an example would be -- like, say, they
19 would tell me that they have like 10 routes and we -- I
20 don't know what orders their meter readers would read
21 in, but I would need to find out from them like what
22 account numbers they wanted in each route. And then we
23 would have different configurations that we could set up
24 for them so they could make sure the right account
25 numbers and right meters came up for the meter reader on

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1 their devices.

2 Q. Did you suggest to the city what configurations
3 to use?

4 A. I would give them options because they -- you
5 know, it is the type of situation where you can't say
6 you have to do it this way, because they had multiple
7 options they could do. I would just tell them like what
8 is the easiest way to do it versus the hardest way to do
9 it. Then they could make a more informed decision that
10 way.

11 Q. And how did you know of these options that you
12 were telling the clients they could use?

13 A. What do you mean?

14 Q. You said you would give them different options.
15 I am trying to figure out how did you know what options
16 were available.

17 A. I would try to find out from them what --

18 Q. From the client?

19 A. Yes, from the client, what they needed. What
20 do you need and then I would say, okay, here is your
21 option based on their needs.

22 Q. Now back to that same sentence. Did you
23 consider yourself consistently analyzing problems?

24

25 MS. HOLMES RAY: Object to the form. You

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1 can answer.

2 A. Yes.

3 Q. (BY MS. KHOSRAVI) And tell me why it is that
4 you considered yourself consistently analyzing problems.

5 A. Well, I mean, the job that I did was the same
6 all the time. So I was -- you know, for every customer
7 I would talk to, I would -- it would be consistently
8 doing the same thing with them just based off of their
9 different needs.

10 Q. And when you say doing the same thing, you mean
11 analyzing their problems?

12 A. Yes.

13 Q. That is what you were referring to?

14 A. Yes.

15 Q. But as you said before, every customer was
16 different, you had to tailor your suggestions to their
17 needs, correct?

18 A. Right, but it was still the same process.

19 Q. The same process of what?

20 A. You know, you would still ask them the same
21 questions; you would just have to figure out, you know,
22 what -- how they did things differently than the other
23 customers, then make the suggestions based on that.

24 Q. Let's turn the page, Ms. Baird. On the top of
25 the third page of your performance review under employee

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1 Q. So who became the contact for the trainers?

2 A. They continued to contact their project
3 managers.

4 Q. I see. And you are testifying that the project
5 managers did not have the knowledge and expertise that
6 you did?

7 A. Yes.

8 MS. HOLMES RAY: Object to the form.

9 Q. (BY MS. KHOSRAVI) Would you read the next
10 sentence for me, please.

11 A. "I would also like to take a class on Microsoft
12 Front Page to learn it better."

13 Q. Tell me what Microsoft Front Page is.

14 A. That is a program for designing web pages.

15 Q. Why did you want to attend that class?

16 A. Because the InSite program, that would have
17 been a way for me take more control of it, to do the
18 set-up so I didn't have to wait on other people to do
19 it.

20 Q. Did you make that suggestion to Dyke Ellison?

21 A. Yes.

22 Q. What did he think?

23 A. He said no.

24 Q. Did he tell you why?

25 A. No.

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1 Q. Would you read the next sentence for me,
2 please.

3 A. "I would also like to be the person to build
4 the site and purchase the SSL certificates and install
5 them."

6 Q. These SSL certificates were the security bar
7 codes you were telling me about?

8 A. No. That was the security software that
9 encrypts your credit card when you make a purchase
10 on-line.

11 Q. And remind me why you were suggesting that you
12 would be the person who builds the site and purchases
13 the certificate.

14 A. Because we had -- I had to wait on other
15 departments to do all of that.

16 Q. In order to --

17 A. In order to do my configuration and my
18 training.

19 Q. Did you make that suggestion to Dyke Ellison?

20 A. Yes.

21 Q. And that was declined, correct?

22 A. Yes.

23 Q. Did he explain to you why that was being
24 declined?

25 A. No.

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1 Q. Did you ever ask or follow up?

2 A. Yes.

3 Q. And the result was?

4 A. He would just not respond.

5 Q. Look at the very last sentence in that
6 paragraph starting with "Joe and Michael". Read that
7 for me.

8 A. "Joe and are much better, but I would be able
9 to do my job more efficiently if I could do these other
10 parts."

11 Q. Who were you referring to when you said Joe and
12 Michael?

13 A. Joe was the programmer and Michael was the IT
14 person that -- they were the two people that I had to
15 wait on in the other department to do their job before I
16 could do mine.

17 Q. So they were Tyler employees?

18 A. Yes.

19 Q. Okay. If you will go ahead and put that aside
20 for me. Now I am going to hand you another one.

21 (Exhibit 2 marked.)

22 Q. Ms. Baird, I am going to hand you what has been
23 marked as Deposition Exhibit Number 2. Take a look at
24 that and tell me if you recognize that document, please.

25 A. Yes.

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1 accounting functions for our regional office, but I also
2 handled the billing and the payments when they came in.

3 Q. When you were being interviewed for a position
4 with Tyler, during the interview process were you told
5 that you were going to be receiving a salary and not
6 overtime pay?

7 A. No.

8 Q. So when did you first become aware that you
9 were not getting paid overtime pay for the hours worked
10 over 40?

11 A. When I started working at Tyler and I asked if
12 we got overtime pay and I was told no.

13 Q. And you realized that even if you worked 45
14 hours you were still getting the same salary as if you
15 worked 40 hours per week, right?

16 A. That was the way it was explained to me.

17 Q. But, in fact, was it reflected in your paycheck
18 that the pay didn't change no matter how many hours you
19 worked?

20 A. That is correct.

21 Q. And did your hours change as well? Were you
22 working a set number of hours per week or were they
23 different?

24 A. The hours that we were, you know, required to
25 work was 8 to 5. But if you didn't complete something,

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1 they would ask, you know, why didn't you stay over and
2 do that.

3 Q. So your hours, depending on your work load,
4 would change week to week, right?

5 A. Yes.

6 Q. It was possible one week you worked 40 and one
7 week you worked 45, for example, correct?

8 A. Yes.

9 Q. And did you ever work less than 40 hours per
10 week?

11 A. Only if I took like a day off in the middle of
12 the week. But not when I worked five days, no.

13 Q. Did you ever make any complaints to anybody at
14 Tyler about overtime pay?

15 A. I expressed my concerns to Dane Womble.

16 Q. Tell me what you told Dane Womble.

17 A. I just told him that, you know, I worked well
18 over 40 hours a week and I felt I should have been
19 compensated for that, and he said we don't do that.

20 Q. So when you said you felt like you should be
21 compensated, you were referring to overtime pay?

22 A. Yes.

23 Q. What were the maximum number of hours that you
24 worked in a given week?

25 A. Like any week?

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1 Q. Yeah, on average I want to know the maximum
2 number of hours that you worked.

3 A. Do you want a maximum or do you want an
4 average?

5 Q. No. Give me a maximum that you ever worked in
6 a given work, that you can remember.

7 A. The maximum that I can ever remember, I worked
8 90 hours one week.

9 Q. What was the situation? Talk to me about that.

10 A. I was travelling and still doing all of my
11 normal work. And it was a very -- we had a very large
12 load that week -- or I had a very large load that week.
13 And that is just what it took me to get the job done.

14 Q. When you say I was travelling and my normal
15 work, why are you distinguishing between the normal -- I
16 don't understand by normal work and then travelling.

17 A. That probably wasn't the best way to word that.
18 Like I had all the interfacing and everything and then
19 they added the Audiotel onto that. So I was not always
20 in the office; I was also travelling and I was away from
21 my desk. So I could not do the remainder of my work
22 while I traveled because I would be at the customer
23 site, you know -- I was giving them my attention and
24 not --

25 Q. Instead of --

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1 A. Right. Instead of everything else. I couldn't
2 do all of it at once where I would be able to put more
3 attention on more things while I was at my desk.

4 Q. So you mean while you were at a client's site
5 you couldn't then assist other clients who were calling
6 you on the phone asking you about another software?

7 A. Yes.

8 Q. Okay. So once you finished with the client's
9 site that you were visiting, once you returned back to
10 your desk you would contact that client, or how did that
11 work? How did you then attend to that client who was
12 trying to reach you?

13 A. I would call them back -- I would return all of
14 my messages and emails and everything. I would just get
15 to them, you know, in the order I received them or if
16 there was something more pressing I would have to
17 prioritize them.

18 Q. I am trying to figure out how it is that you
19 were working 90 hours that week. What were the hours of
20 your clients usually, their office hours? They were
21 municipalities, correct?

22 A. They were usually 8 to 5.

23 Q. So then you were pretty much working 8 to 5?

24 A. I would work 8 to 5, but then I would also work
25 in my hotel room afterwards.

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1 Q. Okay. And what type of work were you doing at
2 your hotel room afterwards?

3 A. I would answer emails. I would call in and get
4 my voice mails. You can't call the customers back at
5 that point, but I would send them emails. I would
6 answer emails. I would contact project managers. We
7 were in constant contact with project managers. So they
8 were the ones that you had to go to for any project.
9 Even if someone bought a software package after they had
10 already gone live on the main system, the project
11 manager was still in charge of that project. So I was
12 always in contact with the project managers.

13 Q. When you say that you were constantly in
14 contact with the project managers, tell me in what way.
15 Because I am envisioning you being in constant contact
16 with the clients who were calling you regarding issues
17 and problems that they were having. Help me understand
18 that.

19 A. Well, I was in contact -- the clients would
20 call in with issues they were having when I was in
21 support. When I was in implementation we were actually
22 implementing programs. We were setting them up,
23 training them how to use them and making them work. I
24 didn't do as much support once I was in implementation.
25 I still did some support. But the project managers are

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1 the ones who we were in contact with when there would be
2 -- arise a problem with a customer, because that was
3 their customer.

4 Q. Okay. So you would be in contact with a
5 project manager once a problem arose?

6 A. Yes.

7 Q. After you had set it up?

8 A. Right. And when I was travelling, you know, I
9 didn't have access to my computer, to my physical
10 computer at the office. So I would have to contact
11 them, you know, we need to do this for this customer or
12 we need to do that for that. And they would have to go
13 over to my desk or get on my computer or something to
14 try to find some of that information. So I had a lot of
15 back and forth communication with the project managers..

16 Q. How many weeks during your employment with
17 Tyler as an implementation specialist do you remember
18 working 90 hours, the maximum that you testified?

19 A. 90 hours, I only remember working one, you
20 know.

21 Q. Okay. Now, on average how many hours a week
22 were you working?

23 A. An average -- I came up with about 60 hours
24 average.

25 Q. And how did you come up with that number?

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